

No. 03-3548

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

WINSTON J. BALLEW,

Petitioner-Appellant,

v.

MICHAEL RANDLE, Warden,

Respondent-Appellee.

ORDER

OCT 29 2003

LEONARD GREEN, Clerk

KENNETH J. MURPHY
CLERK
FILED

03 OCT 29 AM 11:52

C-1-00-329

A TRUE COPY
Attest:
LEONARD GREEN, Clerk
By: *Leanne Barnes*
Deputy Clerk

Winston Ballew, an Ohio state prisoner, appeals a district court judgment dismissing his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Ballew applies for a certificate of appealability. *See* Fed. R. App. P. 22(b). Ballew also moves for the appointment of counsel and for leave to proceed in forma pauperis on appeal.

An individual seeking a certificate of appealability is required to make a substantial showing of the denial of a federal constitutional right. 28 U.S.C. § 2253(c)(2). The § 2253(c)(2) standard is, with a minor modification, a codification of the former certificate of probable cause standard announced in *Barefoot v. Estelle*, 463 U.S. 880, 893-94 (1983). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, ___ U.S. ___, 123 S. Ct. 1029, 1034 (2003) (citing *Slack v. McDaniel*, 529 U.S. 474, 484 (2000)). The record before the court does not

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meet this standard for the reasons set forth in the magistrate judge's report and recommendation filed on October 30, 2002, as adopted by the district court in its order of March 7, 2003.

Accordingly, the court hereby denies Ballew's application for a certificate of appealability and his denies his motions for counsel and leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk